

# **Tompkins County Ithaca Tompkins International Airport Ithaca, NY**



**Airport Concessions Disadvantaged Business Enterprise**  
**(ACDBE) Program**  
**49 CFR Part 23**

October 2021

## POLICY STATEMENT

### **Section 23.1, 23.23 Objectives/Policy Statement**

Tompkins County has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. Ithaca Tompkins International Airport is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). Tompkins County has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of Tompkins County to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airport(s);
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

Roxan Noble, Interim Airport Director, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, Roxan Noble, is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by Tompkins County in its financial assistance agreements with the Department of Transportation.

Tompkins County has disseminated this policy statement to the Tompkins County Legislature and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area and can be found on our website at [www.flyithaca.com](http://www.flyithaca.com).

  
\_\_\_\_\_  
Leslyn McBean-Clairborne, Chair  
Tompkins County Legislature

10/26/2021  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 23.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 23.3 Definitions**

Tompkins County will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

### **Section 23.5 Applicability**

Ithaca Tompkins International Airport is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

### **Section 23.9 Non-discrimination Requirements**

Tompkins County will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its ACDBE program, Tompkins County will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

Tompkins County acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

Tompkins County will include the following assurances in all concession agreements and management contracts it executes with any firm:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

## **Section 23.11 Compliance and Enforcement**

Tompkins County will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107 and 2 CFR parts 180 and 1200.

Tompkins County will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

2 C.F.R. Part 180, Government-wide Debarment and Suspension (Non-procurement), effective November 15, 2006, adopted and supplemented by DOT at 2 C.F.R. Part 1200, effective June 2, 2008, provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement transactions, programs and activities. 2 C.F.R. Part 1200 adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by part 1200, as the Department of Transportation policies and procedures for non-procurement suspension and debarment.

Tompkins County compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The following enforcement actions apply to firms participating in the Tompkins County ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.

- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the Tompkins County's ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review Tompkins County's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the airport sponsor's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by Tompkins County may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

## **SUBPART B – ACDBE PROGRAMS**

### **Section 23.21 ACDBE Program Updates**

The Ithaca Tompkins International Airport is a non-hub primary airport required to have an ACDBE program.

As a condition of eligibility for FAA financial assistance, Tompkins County will submit its ACDBE program and overall goals to FAA according to 23.45(a) of this section.

Until Tompkins County's new ACDBE program is submitted and approved, we will continue to implement our ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at Ithaca Tompkins Regional Airport.

Although this program document applies to all of the above Airports, as required by 23.21(c), we have established separate ACDBE goals for each primary airport (Attachments 5 & 6.)

When Tompkins County makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

### **Section 23.23 Administrative Provisions**

**Policy Statement:** Tompkins County is committed to operating its ACDBE program in a nondiscriminatory manner.

Tompkins County's Policy Statement is elaborated on the first page of this program.

**ACDBE Liaison Officer (ACDBELO):** We have designated the following individual as our ACDBELO:

*Roxan Noble, Interim Airport Director  
Ithaca Tompkins Regional Airport  
72 Brown Road, Ithaca, NY 14850  
Office - 607-279-2662  
[rnoble@tompkins-co.org](mailto:rnoble@tompkins-co.org)*

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that Tompkins County complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Chair of Tompkins County Legislature concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in **Attachment 1** to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of 5 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes the County's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the County Legislature body on ACDBE matters and achievement.
9. Plans and participates in ACDBE training seminars.
10. Acts as liaison to the Unified Certification Program (UCP) in New York.

Directory: Tompkins County through the New York Unified Certification Program (UCP), maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The UCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory Daily. We make the Directory available as follows: <https://nysucp.newnycontracts.com/>. The Directory may be found in **Attachment 2** to this program document. (26.31).

### **Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs**

Tompkins County will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)). We will follow all federal state and local nondiscrimination laws. These laws, policies and procedures include, but are not limited to Title VI and 49 CFR Part 26 and 49 CFR Part 23.

The Airport will include the following assurances in all concession agreements and management contracts it executes:

- The concessionaire and sub-concessionaire shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The concessionaire shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of contracts. Failure by the concessionaire to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Ithaca Tompkins International Airport deems appropriate.
- This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Tompkins County will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The County's overall goal methodology and a description of the race-neutral measures it will use to meet the goals are described in Section 23.25 and **Attachment 5 and 6** of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If Tompkins County projects that race-neutral measures alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and **Attachment 5 and 6** of this plan. (23.25(e))

**Tompkins County will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. (23.25(f))**

Tompkins County will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25(g)).

### **Section 23.27 Reporting**

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006, we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

### **Section 23.29 Compliance and Enforcement Procedures**

Tompkins County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See Attachment 3). (26.37)
3. The County has a monitoring mechanism in place to ensure that the required provisions are being incorporated in concession agreements and management contracts. This includes a written certification that the Airport has reviewed records of all contracts, leases, joint venture agreements, or concession related agreements.
4. We will implement a monitoring and enforcement mechanism to ensure that work committed to an ACDBE firm at contract award is actually performed by the ACDBE firm. This mechanism will provide a running tally of actual ACDBE attainments.

These mechanisms will include:



- The requirements of the ACDBE Program are discussed at pre-proposal meetings and again prior to a contract being executed and the concession beginning work at the airport.
- Concessionaires will be required to complete and submit the Report for Airport Concessions annually to the ACDBELO. The report includes gross receipts for the period and ACDBE participation for the period. The forms found in **Attachment 4** will be required on January 1 (October 1 through September 30). The report will be utilized to complete the annual report required by the FAA.
- The Airport will review the annual reports along with the concession's Letter of Intent to verify and track ACDBE participation.
- Concessionaires will be required to list the specific duties, functions and responsibilities that ACDBEs will perform.
- Concessionaires will be required to submit, for review, a written notification of any material change in the duties, functions and responsibilities of ACDBEs prior to implementing the change.
- The Airport will periodically review the specific duties, functions and responsibilities of each ACDBE to confirm that no material change has occurred.
- The Airport will perform reviews, including periodic site visits to ACDBE concessionaires with local offices to confirm both the ACDBE concession and/or ACDBE suppliers are performing listed duties, functions and responsibilities. For those without an office on-site or local, the Airport may request copies of awards, purchase orders, invoices and/or cancelled checks to verify participation by ACDBE firms.
- The Airport will document the monitoring and enforcement mechanisms in the form of a written certification prepared by the Fiscal Officer.
- The Airport currently does not have any joint venture agreements. In the event the Airport enters into a Joint Venture Agreement, the agreements will be reviewed in accordance with 49 CFR Part 23 and the July 2008 FAA Joint Venture Guidance.

### **SUBPART C – CERTIFICATION AND ELIGIBILITY**

**Section 23.31** We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

Tompkins County is a member of a Unified Certification Program (UCP) administered by the State of New York, which will make ACDBE certification decisions on behalf of Tompkins County.

The UCP's directory of eligible DBEs specifies whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time

### **Section 23.35**

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e))

We will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g).

## **SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 23.41 Basic Overall Goal Requirement**

Tompkins County will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. We will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The Recipient's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

### **Section 23.43 Consultation in Goal Setting**

Tompkins County consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of

disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting our overall goals, we will identify the stakeholders that we consulted with and provide a summary of the information obtained from the stakeholders.

**Section 23.45 Overall Goals**

The sponsor is a nonhub primary airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

<b>Primary Airport Size</b>	<b>Region</b>	<b>Date Due</b>	<b>Period Covered</b>	<b>Next Goal Due</b>
<b>Large/Medium Hubs</b>	<b>All regions</b>	<b>October 1, 2017</b>	<b>2018/2019/2020</b>	<b>October 1, 2020 (2021/2022/2023)</b>
<b>Small Hubs</b>	<b>All regions</b>	<b>October 1, 2018</b>	<b>2019/2020/2021</b>	<b>October 1, 2021 (2022/2023/2024)</b>
<b>Non-Hubs</b>	<b>All regions</b>	<b>October 1, 2019</b>	<b>2020/2021/2022</b>	<b>October 1, 2022 (2023/2024/2025)</b>

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45i)

The sponsor will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, “base figure”. The second step is to examine all relevant evidence reasonably available in the sponsor’s jurisdiction to determine if an adjustment to the Step 1 “base figure” is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

The sponsor will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by ACDBEs and

other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in **Attachment 6** to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in **Attachment 5** to this program.

### **Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))**

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in **Attachments 5 and 6** to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

### **Concession Specific Goals (Also include this language in the DBE goal attachment) (23.25 (c)(e)(1)(iv))**

Tompkins County will use concession specific goals to meet any portion of the overall goals it does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)

We need not establish a concession specific goal on every such concession, and the size of concession specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs.)

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, Tompkins County will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, Tompkins County will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

### **Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv))**

To be eligible to be awarded a concession that has a concession specific goal, bidders/offerors must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to Tompkins County's concession specific goals. Specifically:

#### **Section 26.53 Good Faith Efforts Procedures**

##### Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The ACDBELO or designee is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as **Responsive**.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

##### Information to be submitted (26.53(b))

In our solicitations for concession contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
  - (i) The names and addresses of ACDBE firms that will participate in the contract;
  - (ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each ACDBE firm participating;

- (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
  - (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:
  - (4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

#### Administrative reconsideration (26.53(d))

Within 7 business days of being informed by Ithaca Tompkins International Airport that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Lisa Howard, C&S Companies [lhoward@cscos.com](mailto:lhoward@cscos.com) or 315-725-9642. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

Tompkins County will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO

immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime concession has good cause to terminate the ACDBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed ACDBE sub-concession fails or refuses to execute a written contract;
- (2) The listed ACDBE sub-concession fails or refuses to perform the work of its sub-concession in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the ACDBE sub-concession to perform its work on the sub-concession results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed ACDBE sub-concession fails or refuses to meet the prime concession's reasonable, non-discriminatory bond requirements.
- (4) The listed ACDBE sub-concession becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed ACDBE sub-concession is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed ACDBE subcontractor is not responsible;
- (7) The listed ACDBE sub-concession voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
- (9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE concession is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the ACDBE sub-concession. Provided, that good cause does not exist if the prime concession seeks to terminate an ACDBE it relied upon to obtain the contract so that the prime concession can self-perform the work for which the ACDBE concession was engaged or so that the prime contractor can substitute another ACDBE or non-ACDBE concession after contract award.

Before transmitting to us its request to terminate and/or substitute an ACDBE sub-concession, the prime concession must give notice in writing to the ACDBE sub-concession, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime concession must give the ACDBE five days to respond to the prime concession's notice and advise us and the concessionaire of the reasons, if any, why it objects to the proposed termination of its sub-concession and why we should not approve the prime

concession's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

Tompkins County will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the concession contract as the ACDBE that was terminated, to the extent needed to meet the concession contract goal that we established for the procurement. The good faith efforts shall be documented by the concessionaire. If we request documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the concessionaire, and the recipient shall provide a written determination to the concessionaire stating whether or not good faith efforts have been demonstrated.

We will include in each prime concession contract the contract clause required by § 26.13(b) stating that failure by the concessionaire to carry out the requirements of this part is a material breach of the contract and may result in the termination of the concession contract or such other remedies set forth in that section that we deem appropriate if the prime concessionaire fails to comply with the requirements of this section.

If the concessionaire fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

#### Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of Tompkins County to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of \_\_\_\_ percent of *(annual gross receipts; value of leases and/or purchases of goods and services)* has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as



provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

### **Section 23.53 Counting ACDBE Participation for Car Rental Goals**

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.53.

### **Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals**

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55.

**Section 23.57 (b) Goal shortfall accountability.** If the awards and commitments on our Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;
- (3) The County will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (C) (1) and (2) of this section. We will retain a copy of this analysis and corrective actions in our records for a minimum of three years, and will make it available to the FAA Office of Civil Rights upon request.

### **Section 23.61 Quotas or Set-asides**

We will not use quotas or set-asides as a means of obtaining ACDBE participation.

## **SUBPART E – OTHER PROVISIONS**

### **Section 23.71 Existing Agreements**

We will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. We will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

### **Section 23.75 Long-Term Exclusive Agreements**

We will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a “long-term” agreement is one having a term of longer than 5 years. We understand that an “exclusive” agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

### **Section 23.79 Geographic Preferences**

We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place (Ithaca) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

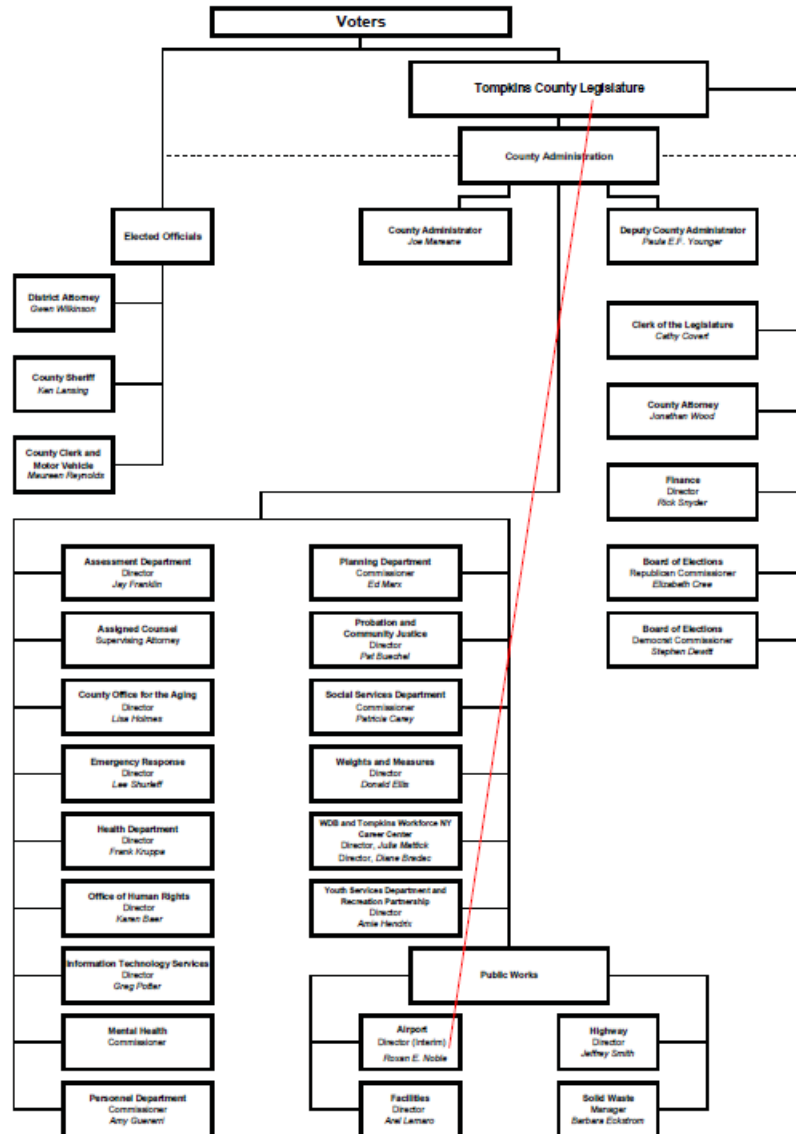
## **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (or website link)
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Airport Concessions Report, Report of Certified ACDBE Firms
Attachment 5	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 7	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 8	Certification Application Forms
Attachment 9	State's UCP Agreement
Attachment 10	Regulations: 49 CFR Part 23

## Attachment 1

### Organizational Chart

Tompkins County Organization Chart



## **Attachment 2**

**New York State DBE Directory**  
**<https://nysucp.newnycontracts.com/>**

### **Attachment 3**

#### **Sample Monitoring and Enforcement Mechanisms**

Tompkins County has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to New York *State Code*, and

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and 2 CFR parts 180 and 1200
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

## Attachment 4

### Report for Airport Concessions: Car Rentals

In accordance with 49 CFR Part 23, Airport Concession Disadvantage Business Enterprise (ACDBE) Program, the airport is required to monitor and report all concession activity at the airport, including any ACDBE (Airport Concession Disadvantaged Business Enterprise) participation. Please complete this form, along with the ACDBE Firms report, and return to the attention of the Airport Manager ([airport@FlyIthaca.com](mailto:airport@FlyIthaca.com)) by: **January 1, 2019.**

Name of Airport: Ithaca Tompkins Regional Airport

City/State/Zip: Ithaca, NY 14850

---

Name of Car Rental Company: \_\_\_\_\_

Report period: 10/1/2017 - 9/30/2018

Semi-Annual (July 1)                       Annual (January 1)

#### Required information:

Total sales generated for period above: \$ \_\_\_\_\_

**Goods and Services:** refers to goods and services purchased (see list of examples on second page)

A. Total (\$) goods and services *purchased* during the period above: \_\_\_\_\_

B. Total number (#) of vendor's that goods and services were purchased from: \_\_\_\_\_

C. Total (\$) goods and services *purchased* from ACDBE's (included in A): \_\_\_\_\_

D. Total (#) of vendor's that goods and services purchased were from ACDBE's (included in B):  
\_\_\_\_\_

**Sub-Concessions:** is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport

A. Total (\$) Sub-concessions During the period above: \$ \_\_\_\_\_

B. Total Number (#) of Sub-concessions during the period above: \_\_\_\_\_

C. Total (\$) ACDBE Sub-Concessions during the period above (included in A): \$ \_\_\_\_\_

D. Total (#) ACDBE Sub-Concessions during the period above (Included in B): \_\_\_\_\_

Examples of goods and services:

- Key Blanks
- Oil Change Services
- Insurance
- Office Supplies
- Janitorial Services
- Tires
- Auto Repair Services
- Auto Part Supplies
- Security Services
- Payroll Services
- Towing Services
- Car Wash Services
- Landscaping Services

***Reminder: Please complete the required ACDBE Firms Report for all Certified ACDBE's that you have reported above (C & D under goods and services).***



**REPORT OF CERTIFIED ACDBE FIRMS  
(CONCESSIONAIRES/SUBCONCESSIONAIRES/  
SUPPLIERS/MANAGEMENT CONTRACTORS - COUNTED TOWARD GOALS)**

Name of Airport: Ithaca Tompkins Regional Airport

Fiscal Year: \_\_\_\_\_

Airport Concession: \_\_\_\_\_

Preparer: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

List below each ACDBE that participated in a concession during the preceding fiscal year  
If no ACDBE firm participated, write "NONE" below.

Semi-Annual       Annual

---

Name of ACDBE Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contact Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Concession Type:     Concessionaire       Sub concessionaire       Supplier  
                           Joint Venture Partner     Management Contract     Other

Business Type:

Non Car Rental:     News & Gifts       Food & Beverage       Wireless Services  
                           ATM                     Vending                 Luggage Carts  
                           Jewelry                Accessories            Janitorial  
                           Insurance             Parking Management    OTHER

Car Rental:         Insurance             Uniform                 Vending  
                           Gas / Oil              Office Supplies         OTHER

Estimated gross receipts for this reporting period: \$ \_\_\_\_\_

Type of Disadvantage Group:

Black       Hispanic       Native American       Asian-Indian American  
 Asian-Pacific American       Non-Minority Woman       Other Disadvantaged

Name of ACDBE Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contact Email: \_\_\_\_\_ Phone: \_\_\_\_\_

- Concession Type:
- Concessionaire
  - Joint Venture Partner
  - Sub concessionaire
  - Management Contract
  - Supplier
  - Other

**Business Type:**

- Non Car Rental:
- News & Gifts
  - ATM
  - Jewelry
  - Insurance
  - Food & Beverage
  - Vending
  - Accessories
  - Parking Management
  - Wireless Services
  - Luggage Carts
  - Janitorial
  - OTHER

- Car Rental:
- Insurance
  - Gas / Oil
  - Uniform
  - Office Supplies
  - Vending
  - OTHER

Estimated gross receipts for this reporting period: \$\_\_\_\_\_

**Type of Disadvantage Group:**

- Black
- Hispanic
- Native American
- Asian-Indian American
- Asian-Pacific American
- Non-Minority Woman
- Other Disadvantaged

## Report for Airport Concessions: Non-Car Rentals

In accordance with 49 CFR Part 23, Airport Concession Disadvantage Business Enterprise (ACDBE) Program, the airport is required to monitor and report all concession activity at the airport, including any ACDBE (Airport Concession Disadvantaged Business Enterprise) participation. Please complete this form, along with the ACDBE Firms report, and return to the attention of the Airport Manager ([airport@FlyIthaca.com](mailto:airport@FlyIthaca.com)) by: **January 1, 2019.**

Name of Airport: Ithaca Tompkins Regional Airport

City/State/Zip: Ithaca, NY 14850

---

Name of Concessionaire: \_\_\_\_\_

Report period: 10/1/2017 - 9/30/2018

Semi-Annual (July 1)                       Annual (January 1)

### Required information:

Estimate Gross Receipts for period above: \$ \_\_\_\_\_

### Sub-Concessions:

E. Total (\$) Sub-concessions During the period above: \$ \_\_\_\_\_

F. Total Number (#) of Sub-concessions during the period above: \_\_\_\_\_

G. Total (\$) ACDBE Sub-Concessions during the period above (included in A): \$ \_\_\_\_\_

H. Total (#) ACDBE Sub-Concessions during the period above (Included in B): \_\_\_\_\_

I. From C, total (\$) and D, total (#) ACDBE Sub-Concessions from:

Race-Conscious (*Race-conscious* means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.)

\$ \_\_\_\_\_ and # \_\_\_\_\_

Race-Neutral (*Race-neutral* means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.)

\$ \_\_\_\_\_ and # \_\_\_\_\_

**Management Contracts:**

- A. Total (\$) Management Contracts During the period above: \$ \_\_\_\_\_
- B. Total Number (#) of Management Contracts during the period above: \_\_\_\_\_
- C. Total (\$) ACDBE Management Contracts during the period above (included in A): \$ \_\_\_\_\_
- D. Total (#) ACDBE Management Contracts during the period above (Included in B): \_\_\_\_\_
- E. From C, total (\$) and D, total (#) ACDBE Management Contracts from:

Race-Conscious (*Race-conscious* means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.)

\$ \_\_\_\_\_ and # \_\_\_\_\_

Race-Neutral (*Race-neutral* means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.)

\$ \_\_\_\_\_ and # \_\_\_\_\_

**Goods and Services:**

- A. Total (\$) goods and services *purchased* during the period above: \$ \_\_\_\_\_
- B. Total number (#) of vendor's that goods and services were purchased from: \_\_\_\_\_
- C. Total (\$) goods and services *purchased* from ACDBE's (included in A): \$ \_\_\_\_\_
- D. Total (#) of vendor's that goods and services purchased were from ACDBE's (included in B):  
\_\_\_\_\_
- E. From C, total (\$) and D, total (#) ACDBE goods and services purchased from:

Race-Conscious (*Race-conscious* means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.)

\$ \_\_\_\_\_ and # \_\_\_\_\_

Race-Neutral (*Race-neutral* means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.)

\$ \_\_\_\_\_ and # \_\_\_\_\_

**Reminder: Please complete the required ACDBE Firms Report for all Certified ACDBE's that you have reported above.**

## Attachment 5

### Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rentals

Amount of Goal **\$56,095**

**Name of Recipient:** Tompkins County  
Ithaca – Tompkins Regional Airport

**Goal Period:** FY-2020-2021-2022 – October 1, 2019 through September 30, 2022

**Overall Three-Year Goal:**

**1.80%, to be accomplished through 0.00% RC and 1.80% RN**

#### **Methodology used to Calculate Overall Goal:**

The Airport in conducting this goal-setting process is determining the extent, if any, to which the firms in the market area have suffered discrimination or its effects in connection with concession opportunities and related business opportunities.

#### **Market Area**

The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located.

Tompkins County has determined that its market area is New York.

#### **Base of Goal**

To calculate the base of the goal Ithaca Tompkins International Airport considered the previous 3 years of gross concession receipts and the projected potential concession revenue (gross receipts) three years into the future including upcoming new opportunities.

#### **Gross Receipts for Previous 3 Years - Non-Car Rental Concessions**

<b>Fiscal Year</b>	<b>Non-Car Concessions Revenue (Gross Receipts)</b>
2016	\$185,198
2017	\$506,988

2018	\$896,634

Tompkins County estimates that revenues to existing concessions will grow by 5% over the next three years due to inflation and increased passenger traffic.

$$(2018) \$896,634 + 5\% (\$44,832) = \$ 941,466$$

$$(2019) \$ 941,466 + 5\% (\$47,073) = \$ 988,539$$

$$(2020) \$ 988,539 + 5\% (\$49,427) = \$1,037,966$$

$$(2021) \$1,037,966 + 5\% (\$51,898) = \$1,089,864$$

$\$988,539 + \$1,037,966 + \$1,089,864 = \$3,116,369$  is the recipient's base of the goal for non-car rental concessions.

The concession opportunities anticipated during this goal period are:

Food and Beverage, Advertising, ATM, and Vending with estimated gross receipts of \$3,116,369.

The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, Tompkins County will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

**Methodology used to Calculate Overall Goal**

**Goods and Services**

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. We, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

### Management Contract or Subcontract

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. *While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.*

#### Step 1: 23.51(c)

We determined the base figure for the relative availability of ACDBEs for non-car rental concessions. The base figure was calculated as follows:

**Numerator:** Ready, willing, and able non-car rental ACDBEs in the market area

\_\_\_\_\_ divided by \_\_\_\_\_

**Denominator:** All ready, willing and able non-car rental concession firms in the market area

The data source or demonstrable evidence used was the New York State DBE/ACDBE UCP directory and Census Bureau data.

Concession Activity	NAICS / SIC code/s	ACDBE Firms	All firms	% Availability
Food service contractors	722310	43	1980	2.17%
Advertising	541810	24	1510	1.59%
Vending	454210	9	227	3.96%
ATM	522320	0	506	0.00%
<b>Total</b>		<b>76</b>	<b>4223</b>	<b>1.80%</b>

When we divided the numerator by the denominator we arrived at the Step 1 base figure for our overall goal for non-car rental concessions of: **1.80%**

## **Step 2: 23.51(d)**

There is no historical ACDBE data to reference to make an adjustment to the Step 1 base figure therefore Tompkins County is adopting its Step 1 base figure of 1.80% as its overall goal for this 3-year goal period.

We feel this adjusted goal figure will accurately reflect ACDBE non-car rental concession participation that can be achieved during this 3-year period. There are no applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs.

## **PUBLIC PARTICIPATION**

**Consultation:** Section 23.43.

Prior to submitting this goal to the FAA, Ithaca Tompkins International Airport consulted with the following stakeholders:

New York State Empire State Development Division of Minority and Women's Business Development, Airport Minority Advisory Council (AMAC), The National Minority Business Council, Tompkins County Chamber of Commerce, concessionaires at the airport, and national ACDBE supplier firms that provide goods and services to concessionaires. The consultation was done by mass mailer.

A summary of the information these stakeholders provided is as follows:

*OR*

No comments have been received.

### **Breakout of Estimated Race-Neutral & Race Conscious Participation** **Section 23.51**

Tompkins County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. Tompkins County uses the following race-neutral measures.

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;



2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;
4. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;
5. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation

We estimate that, in meeting our overall goal of 1.80%, we will obtain 1.80% from race-neutral participation and 0.00% through race-conscious measures

1. Data from private sector MBE/WBE participation;
2. Information you obtained through consultation with stakeholders;

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

## Attachment 6

### Section 23.45: Overall Goal Calculation for Car Rentals

#### Section 23.45: Overall Goal Calculation for Car Rental Company Concessions

Amount of Goal \$185,911

**Name of Recipient:** Tompkins County  
Ithaca Tompkins Regional Airport

**Goal Period:** FY-2020-2021-2022 – October 1, 2019 through September 30, 2022

#### **Overall Three-Year Goal:**

1.10%, to be accomplished through 0.00% RC and 1.10% RN

#### **Methodology used to Calculate Overall Goal:**

The Airport in conducting this goal-setting process is determining the extent, if any, to which the firms in the market area have suffered discrimination or its effects in connection with concession opportunities and related business opportunities.

#### **Goal Based on Goods and Services Purchases - Determination:**

Upon review of the market, it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods/services from ACDBEs. This is due to the fact that no certified ACDBE car rental companies exist within the market. As such, Tompkins County has structured the goal entirely in terms of the purchases of goods and services.

We determined the goal based on outreach for the purchases of goods and services from certified ACDBE firms and/or potential ACDBE firms in the market area. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at the Airport. We will make a good faith effort to pursue opportunities to meet the goods and services goal. We will continue to consult and work with the New York State DOT & UCP, our car rental concessionaires at the Airport, similarly situated airports in our region, minority and women businesses in the State, minority serving institutions, local pro-business organizations, and targeted media publications to find prospective ACDBE firms. We will work with our car rental companies to strategize outreach to New York State DOT & UCP certified ACDBEs that may be able to provide car rental goods and services, to encourage current vendors who may be

eligible for ACDBE certification to apply, and to encourage firms already working at the airport but certified as ACDBE in other states, to apply via the interstate certification process. The New York State DOT & UCP is aware of this requirement and is on board to assist and process certifications as required by 49 CFR Subpart C.

We have the following car rental agencies operating at the airport: Hertz, Avis-Budget.

After collaboration and discussion with the Airport, car rental company concessionaires at the Airport stated that the goods and services they may need in the goal period are: Automobile Parts, Oil Change Services, Office Supplies, Auto Repair Services, Insurance Services, Tires and Landscaping Services with estimated gross receipts of **\$16,901,018**.

### **Market Area**

The market area is the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and in which the firms which receive the substantial majority of concessions-related revenues are located.

Tompkins County has determined that its market area is Nationwide.

### **Base of Goal**

To calculate the base of the goal, Tompkins County considered the previous 3 years of car rental expenditures/purchases and the projected potential car rental expenditures three years into the future, including upcoming new opportunities.

#### **Expenditures for Previous 3 Years - Car Rental**

<b>Fiscal Year</b>	<b>Car Rental Expenditures/Purchases</b>
2016	333,637
2017	6,788,386
2018	4,862,719

Tompkins County estimates expenditures will increase by 5% over the next three years due to inflation and increased passenger traffic as shown below.

**Example 1:**

(2018) \$4,862,719 + 5% (\$243,136) = \$5,105,855

(2019) \$5,105,855 + 5% (\$255,293) = \$5,361,148

(2020) \$5,361,148 + 5% (\$268,057) = \$5,629,205

(2021) \$5,629,205 + 5% (\$281,460) = \$5,910,665

\$5,361,148 + \$5,629,205 + \$5,910,665 = **\$16,901,018** is the recipient's base of the goal for car rental concessions.

The following are not included in this base: (a) non-car rental operations.

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, Tompkins County will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

**Step 1: 23.51(c)**

The data source or demonstrable evidence used was the New York State DBE/ACDBE UCP directory and Census Bureau data.

NAICS	Type of Concession	Total ACDBE's	Total All Firms	% of Availability
811121	Auto Body Work	84	33,950	0.25%
441310	Auto Parts	22	37,259	0.06%
811111	Auto Repair	93	80,842	0.12%
811192	Car Wash & Detailing	117	16,166	0.72%
238210	Electrical (Low Voltage)	1866	72,784	2.56%
811198	Inspection Services	52	4,257	1.22%
524210	Insurance	202	134,423	0.15%
424330	Car Seats	33	7,589	0.45%
811191	Motor Oil	24	8,395	0.29%
561730	Snow Plow	1819	101,567	1.79%
561720	Janitorial Services	1622	57,898	2.80%
424120	Office Supplies	150	4,349	3.45%
561710	Pest Control	104	13,985	0.74%

238220	Plumbing, HVAC, Fire Suppression	927	98,434	0.94%
561612	Security	467	9,846	4.74%
423130	New tires	22	2,534	0.87%
488410	Towing	50	8,994	0.56%
812331	Uniforms	4	1,052	0.38%
811122	Windshield Repair	34	6,160	0.55%
Total		7692	700,484	1.10%

**Based on the chart above our Step 1 base figure is 1.10%.**

**Step 2: 23.51(d)**

After conducting a market survey this fiscal year, it is apparent that a good number of ACDBE firms in our market have responded with at least some interest in supplying our car rental agencies with goods and services. However, we do not have a history of accomplishments to use for a Step 2 adjustment due to lack of an ongoing program. Also, we do not have an applicable disparity study or any other statistically reliable evidence to use to adjust the goal. Therefore, we do not believe a Step 2 Adjustment can be made based on demonstrable evidence. Thus, we are adopting our Step 1 goal of 1.10% with plans to conduct informational meetings and outreach to ACDBE firms to ensure the goal is reached. We also plan to aggressively outreach to minority and small business firms who may be potential ACDBE firms in an effort to ensure fair opportunities for all. We will be conducting outreach jointly with our car rental agencies to ensure that they make good faith efforts to meet the goal.

Further, there are no applicable disparity studies for the local market area or recent legal case information available to show any evidence of barriers to entry or competitiveness of ACDBEs

**PUBLIC PARTICIPATION**

**Consultation:** Section 23.43.

Prior to submitting this goal to the FAA, Ithaca Tompkins International Airport consulted with the following stakeholders:

New York State Empire State Development Division of Minority and Women’s Business Development, Airport Minority Advisory Council (AMAC), The National Minority Business Council, Tompkins County Chamber of Commerce, concessionaires at the airport, and national ACDBE supplier firms that provide goods and services to concessionaires. The consultation was done by mass mailer.

A summary of the information these stakeholders provided is as follows:

OR

No comments have been received.

### **Breakout of Estimated Race-Neutral & Race Conscious Participation** **Section 23.51**

Tompkins County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. Tompkins County uses the following race-neutral measures.

We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;*
2. *Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
5. *Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and*

We estimate that, in meeting our overall goal of 1.10%, we will obtain 1.10% from race-neutral participation and 0.00% through race-conscious measures.

1. Data from private sector MBE/WBE participation;
2. Information you obtained through consultation with stakeholders;

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities.

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE

participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

Attachment 7

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

*[Forms 1 and 2 should be provided as part of the solicitation documents.]*

**FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid/proposal specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % ACDBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the ACDBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% ACDBE utilization on this contract and submitted documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)



**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of ACDBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by ACDBE firm:

-----  
-----  
-----  
-----

The bidder/offeror is committed to utilizing the above-named ACDBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
(Signature) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

(Submit this page for each ACDBE subcontractor.)

**Attachment 8**

**ACDBE Certification Application Form**

<https://nysdot.newnycontracts.com/>

<https://mta.newnycontracts.com/>

<https://nfta.newnycontracts.com/>

<https://panynj.diversitysoftware.com/>

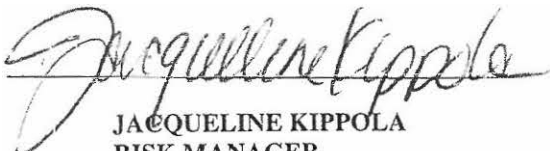
**ATTACHMENT 9**

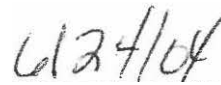
**State's UCP Agreement**

**NYSUCP NON-CERTIFYING PARTNER**

As a result of the requirements set forth in 49 CFR Part 26, we, the undersigned, agree to participate in the NYSUCP in accordance with the tenets of this MOU and agree to abide by its contents. This MOU is being executed by the NYSUCP Partners as separate agreements and at separate times. Each separately executed agreement shall be considered an original of the MOU, as if each Partner had. executed the same agreement.

EXECUTED AND DELIVERED by and between the NYSUCP Partners as of the effective date of this MOU.

  
\_\_\_\_\_  
JACQUELINE KIPPOLA  
RISK MANAGER  
COUNTY OF TOMPKINS

  
\_\_\_\_\_  
Date 1

\_\_\_\_\_  
Agency

## **Attachment 10**

### **Regulations: 49 CFR Part 23**

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.23&rgn=div5>